

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Colonial Realty Company)
Map 093-06-0, Parcel 39.00) Davidson County
Commercial Property)
Tax Years 2005 & 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

Tax Year 2005

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$584,000	\$2,816,000	\$3,400,000	\$1,360,000

Tax Year 2006

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$584,000	\$2,991,600	\$3,575,600	\$1,430,240

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on January 30, 2007 in Nashville, Tennessee. In attendance at the hearing were registered agent Betty A. Sellers and Robert D. Waites for the appellant, and Davidson County Property Assessor's representative Dennis Donovan, MAI.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 0.67 acre site located at 300 2nd Avenue South and 105 Molloy Street in Nashville, Tennessee. The primary improvements on subject site include a vacant 45,500 square foot restaurant/nightclub built in 1929 and a fully occupied 45,518 square foot office project constructed in 1929.

The taxpayer contended that subject property should be valued at \$2,000,000. In support of this position, the taxpayer introduced two separate appraisal reports prepared by Ronald A. Neyhart, MAI. Mr. Neyhart concluded that the restaurant/nightclub building (Gateway Entertainment Complex) had \$0 value as of December 31, 2004 because demolition and redevelopment constitutes its highest and best use. With respect to the office building (XO Communications), Mr. Neyhart concluded that the value of the leased fee estate was \$2,000,000 as of December 31, 2004.

For all practical purposes, the assessor of property moved for a directed verdict. Mr. Donovan essentially argued that the appraisal reports should not receive any weight because Mr. Neyhart was not present to testify.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

Since the taxpayer is appealing from the determination of the Davidson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds the assessor's motion for a directed verdict well taken. The administrative judge finds that the State Board of Equalization has historically refused to give any weight to appraisal reports when the appraiser is not present to testify and the assessor challenges his or her analysis. See e.g., *TRW Koyo* (Monroe Co., Tax Years 1992-1994) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .

* * *

. . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

Final Decision and Order at 2. Moreover, the administrative judge finds that the appraisal of the office building is seemingly irrelevant because Mr. Neyhart appraised the leased fee estate.¹ See *First American National Bank Building Partnership* (Davidson Co., Tax Years 1984-1987) wherein the Assessment Appeals Commission ruled that it "is the entire fee simple unencumbered value and not any lesser or partial interests" which is normally subject to taxation.

Based upon the foregoing, the administrative judge would normally affirm the current appraisals of subject property based upon the presumptions of correctness attaching to the decisions of the Metropolitan Board of Equalization. In this case, however, the higher

¹ The administrative judge recognizes that in certain circumstances the fee simple value and the value of the leased fee estate are synonymous. Absent Mr. Neyhart's testimony, however, the administrative judge finds that it cannot be determined whether this appraisal involves such a situation.

appraisal for tax year 2006 resulted from the fact that tax years 2005 and 2006 were consolidated for hearing before the State Board of Equalization. The administrative judge finds that the reduction in value granted locally for tax year 2005 would normally have been carried forward for tax year 2006 had the appeals not been consolidated. Accordingly, the administrative judge finds that subject property should be valued at \$3,400,000 for both tax years 2005 and 2006.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax years 2005 and 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$584,000	\$2,816,000	\$3,400,000	\$1,360,000


It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 5th day of February, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Ms. Betty A. Sellers
Jo Ann North, Assessor of Property